Pacific asserts that this definition from § 701 means that § 703(b) does not apply in this case for two independent reasons. First, "exchange access" is excepted from the definition of "telecommunications traffic" that is subject to reciprocal compensation, and transport from one of Pacific's calling areas to a different local calling area constitutes exchange access. Second, transport and tandem switching between Pacific's end office and GNAPs' POI is not "from the parties' interconnection point to the terminating carrier's end office switch." On the contrary, it is transport from the originating carrier's switch to the POI. Pacific has agreed to pay reciprocal compensation when GNAPs terminates Pacific-originated calls. However, Pacific is proposing that GNAPs bear a portion of the incremental costs to get to GNAPs' POI. Pacific clarifies that its proposal would not require GNAPs to pay for all transport between the Pacific end office and the POI. GNAPs would pay only when the caller and the POI are situated in different tandem sector areas, and the transport mileage would be discounted by the mileage for a local call in California. (Appendix Network Interconnection Methods, § 2C.)

We concur with Pacific's statement that the arbitrator erred in relying on Rule 51.703(b) without taking Rule 51.701 into account. To understand the full picture regarding reciprocal compensation requirements, Rule 51.703 cannot be viewed in a vacuum; it must be read in conjunction with Rule 51.701. Part of the confusion relating to these provisions centers around the fact that the FCC has changed its definition from its Local Competition Order, which used the term "local" to distinguish the types of calls subject to reciprocal compensation. However, in its ISP Remand Order, the FCC concluded that a reasonable reading of the Act is that Congress intended to exclude the traffic listed in subsection 251(g) from the reciprocal compensation requirements of subsection

251(b)(5).[2] The FCC states that the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers. The FCC acknowledges that it refrains from generically describing traffic as "local" traffic because the term "local" is not a statutorily-defined category, is susceptible to varying meanings, and is not a term used in § 251(b)(5) or § 251(g). (ISP Remand Order, ¶ 34.)

In footnote 65, the FCC provides further guidance on the meaning of the phrase in 251(g), "exchange access, information access, and exchange services for such access." Footnote 65 states:

> The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ [Modified Final Judgment]. Rather, the term "exchange service is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purpose of originating or terminating

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[2] Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No 99-68, FCC 01-131 (rel. April 27, 2001) "ISP Remand Order." We note that the ISP Remand Order was again remanded to the FCC by the United States Court of Appeals, D.C. Circuit, in WorldCom Inc v FCC, 288 F.3d 429, Case No. 01-1218, May 3, 2002. Because § 251(g) was worded simply as a transitional device, preserving various local exchange carrier duties that antedated the 1996 Act until such time as the FCC adopted new rules pursuant to the Act, the court found the commission's reliance on § 251(g) was precluded. However, the court acknowledged that there could be other legal bases for adopting the rules chosen by the commission, and did not vacate the commission's order but remanded the case for further proceedings. In its struggles to distinguish the type of traffic covered by the reciprocal compensation provisions of § 251(b)(5), the FCC has made it clear that that provision applies to local traffic, which is the way we have applied the FCC's rules in this arbitration. Therefore, the court's decision does not impact on the determinations we make in this order. However, we recognize that the FCC's order on remand will be covered by the change in law provisions of these ICAs.

> interexchange telecommunications." *United States v. AT&T*, 552 F.Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. (ISP Remand Order, footnote 65.)

In terms of this arbitration, this clarification the FCC provided assists us in determining which telecommunications traffic is subject to the reciprocal compensation provisions of § 251(b)(5). While the FCC has moved away from its initial use of the term "local" to differentiate the traffic that is subject to reciprocal compensation, use of the terms "local" and "interexchange" helps us to clarify which traffic is subject to reciprocal compensation.

The FAR relies on the language in FCC Rule 51.703(b) as justification that GNAPs should not have to pay transport and tandem switching for any traffic that GNAPs receives from the ILECs at the single POI it plans to establish for a given LATA. The FAR erroneously relied on Rule 51.703(b) and failed to look at that rule in conjunction with Rule 51.701. Based on the FCC's interpretation of the Act's meaning in § 251(g), we find that interexchange traffic is not subject to the Act's reciprocal compensation requirements. At the same time, § 703(b) forbids the ILEC from assessing any charges to transport "local" traffic which is subject to reciprocal compensation

We interpret the FCC's rules to mean that GNAPs is responsible for compensating the ILECs for terminating intraLATA toll calls (which are interexchange in nature) from GNAPs' customers. At the same time, GNAPs is not responsible for compensating the ILECs for transporting local calls (which are subject to reciprocal compensation) on the ILEC's side of the POI.

The FCC has provided language in various orders that supports the interpretation of its rules that we have made here. The FCC reiterated its position in its Kansas/Oklahoma 271 order as follows:

> In our *SWBT [Southwestern Bell Telephone] Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for *local traffic* that originates on the incumbent LEC's network.[3]

And in its Intercarrier Compensation NPRM, the FCC states:

> Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network. These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier.[4]

The FCC's language cited above makes it clear that Rule 51.703(b) applies to *local* traffic.

In its Comments on the Draft Decision (DD), GNAPs reiterates its argument that toll traffic is only "exchange access" traffic when a separate toll charge is imposed on the customer. According to GNAPs, since it proposes a LATA-wide local calling area, calls between exchanges within the LATA would

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[3] Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (Rel. January 22, 2001), ¶235 (footnotes omitted, emphasis added), "Kansas/Oklahoma 271 Order."

[4] Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 01-032 (Rel. April 27, 2001), ¶ 112.

be not subject to toll charges. As a consequence, GNAPs believes that traffic is not exchange access traffic.

As we stated above, the calling areas adopted by the Commission govern whether a call is local or an intraLATA toll call. There is a difference between the retail service offering that GNAPs provides to its customers, e.g., LATA-wide local calling, and the wholesale obligations between carriers. In this instance, we are using the Commission-adopted calling area paradigm to determine whether calls are rated as local or intraLATA toll. Since that is the case, GNAPs' argument that this would not be "exchange access" traffic does not have merit. Any call rated as an intraLATA toll call under the Commission's established calling areas would constitute exchange access traffic, not local traffic.

Once we distill this issue down to this easily understandable difference in traffic, we need to evaluate the parties' positions to see whether the ICA language is consistent with our determination. In the following section, we provide broad policy guidance on the issues discussed. The specific contract language we adopt, to the extent that it differs from that adopted in the FAR, is addressed in Appendix A.

First, we examine Pacific's proposed language in Appendix NIM [Network Interconnection Methods], § 2-A, 2-B and 2-C. In § 2-A, Pacific states: "For calls that originate and terminate to end users physically located in the local exchange where the POI is located, both Carrier and Company shall only be financially responsible for the facilities, trunking and equipment on its side of the POI." That language does not conform to the FCC's rule that carriers are responsible for transport on their side of the POI of <u>all</u> calls that would be classified as "local." For example, there could be two neighbors within the LATA, but distant from the POI. If one is a customer of the ILEC, and the other is a customer of

GNAPs, and they call each other, those calls would be classified as local, regardless of the fact that the call itself had to be transported from Caller A, to the POI, and then back out to Caller B. Pacific's language in 2-C would allow the company to charge transport for that call, just because the POI is located outside of the local exchange where the call originates and terminates. That outcome violates the FCC's rules, and will not be allowed. The call would be classified as local, and GNAPs may not be assessed transport charges on the ILEC's side of the POI.

Next we examine Verizon's use of the Interconnection Point or IP for determining where financial responsibility is passed from one carrier to another. As cited in the Draft Arbitrator's Report, Verizon's witnesses Kathryn Allison and Don Albert provide a succinct definition of the difference between the POI and the IP in Verizon's proposal:

> A POI is where the ILEC and CLEC physically interconnect their respective networks. This is the place where the carriers' wires physically meet. An IP is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place but do not have to be. Pursuant to Verizon's proposal, Verizon is financially responsible for delivering its traffic to GNAPs' IP. Once Verizon delivers traffic originating on its network to GNAPs' IP, then GNAPs is financially responsible for transporting the traffic to its customer.[5]

We find Verizon's IP concept to be problematic. There is no indication that there is any relationship between the IPs, and the local calling area. The IPs

[5] Exhibit 5, Direct Testimony of Kathryn Allison and Don Albert on Behalf of Verizon at 6.

represent points at which financial responsibility for the traffic passes from one carrier to the other. Therefore, the IPs could be locations that would require GNAPs to pay transport charges for calls that would be rated as local calls. That violates the FCC's § 703(b) that states that the ILEC may not assess charges for such traffic.

Verizon cites the FCC's Pennsylvania 271 Order to demonstrate that its proposal to allocate financial responsibility for transporting traffic to GNAPs' distant POI complies with federal requirements. According to Verizon, the FCC rejected the claim that Verizon's proposal to allocate financial responsibility for interconnection on Verizon's side of the POI violates federal requirements:

> Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that Verizon's policies do not represent a violation of our existing rules. Verizon states that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it permits carriers to physically interconnect at a single point of interconnection (POI). Verizon acknowledges that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities. The issue of allocation of financial responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM.* We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single physical point of interconnection per LATA. Because the issue is open in our *Intercarrier Compensation NPRM,* we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.[6]

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[6] Memorandum Opinion and Order, In the Matter of Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon

Footnote continued on next page

The FCC stresses that Verizon complies with its "clear requirement" that ILECs provide for a single POI per LATA. However, it is not at all clear from the FCC's language that it is endorsing Verizon's IPs, since that specific issue is included in its Intercarrier Compensation NPRM. We are reminded that this decision is in a 271 proceeding, not in a rulemaking, and peripheral issues are not addressed in the same way as they would be in a rulemaking. The FCC does not state that Verizon's IP proposal is in compliance with the Act. It simply says that it cannot find that Verizon's policies for financial responsibility fail to comply with its obligations under the Act.

The FCC has indicated in the past that its 271 proceedings are limited in scope. In its statement on the conformed agreement, Pacific cites a portion of the FCC's Louisiana/Georgia 271 Order, as follows:

> [As] the Commission stated in prior section 271 orders, while the Commission will consider, in a section 271 proceeding, whether a BOC [Bell Operating Company] permits a requesting LEC to physically interconnect at a single Point of Interconnection (POI), it will not attempt to settle new and unresolved disputes about the precise content of an incumbent LEC's obligations to its competitors – disputes that do not involve per se violations of self-executing requirements of the Act.[7]

Global Networks, and Verizon Select Services for Authorization to Provide in-Region Services in Pennsylvania, CC Docket No. 01-138, FCC No. 01-269 (re. Sep. 19, 2001) ¶ 100 (footnotes omitted) "Pennsylvania 271 Order."

[7] Memorandum Opinion and Order, In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region Services in Georgia and Louisiana, CC Docket No. 02-35, FCC 02-147 (released May 15, 2002, "Louisiana/Georgia 271 Order," ¶208 and 816.

We believe that the issue of Verizon's IPs is more in the nature of "new and unresolved disputes" that the FCC does not address specifically in its 271 Orders.

However, regardless of the FCC's intent in its Pennsylvania 271 Order, it is of limited value in our arbitration proceeding in California. There could well be factual differences between the Pennsylvania 271 proceeding and our arbitration proceeding. For instance, the local calling areas in Pennsylvania may be different from those in California, so the relationship between local calling areas and IPs may differ between the two states. In other words, we do not place the same reliance that Verizon does on what the FCC concluded in its Pennsylvania 271 Order. We make our determination on the FCC's Rule 703(b) which is currently in effect, and will govern the outcome in this arbitration. We note that the issue of whether the ILECs should be compensated for *local* traffic on the ILEC's side of the POI is currently before the FCC in the Intercarrier Compensation NPRM. The outcome of the FCC's decision in that docket will be incorporated into the ICAs under the applicable change in law provisions.

In its Statement, Pacific asserts that the FCC has *never* said *anywhere* that its rules mean an ILEC must pay for the transport necessary to reach a Competitive Local Exchange Carrier (CLEC) point of interconnection in a distant local calling area. Pacific cites the Pennsylvania 271 Order as proof that the FCC specifically does not mean that.

However, we dispute Pacific's conclusion. We respond that the FCC has never said anywhere that its rules mean an ILEC does not have to pay for transport necessary to reach a CLEC POI in a distant local calling area. The FCC's Kansas/Oklahoma 271 Order Paragraph 235 supports our position:

> Finally, we caution SWBT [Southwestern Bell Telephone] from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection. In our *SWBT Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. *We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.* These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier.[8]

The FCC does not provide any sort of exclusion for local traffic that must travel across the ILEC's network. The key element is that the traffic is local in nature, and in that case Rule 51.703(b) applies. Pacific turns the FCC's rule on its head when it states that the rule has to specifically include local traffic that is transported across the ILEC's network to the single POI. We disagree. Since the FCC does not exclude any type of local traffic from its Rule 51.703(b), there are no exclusions. We acknowledge that the FCC is looking at this specific issue in its Intercarrier Compensation NPRM, but until the FCC completes its

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[8] Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications Inc., Southwest Bell Telephone "Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwest Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (rel. January 22, 2001), ¶ 235, "Kansas/Oklahoma 271 Order." (Footnotes omitted, emphasis added.)

rulemaking, the current rule applies. It is clear from the FCC's language in the Kansas/Oklahoma 271 order that the FCC is well aware that the single POI raises issues relating to inter-carrier compensation arrangements.

Pacific cites 113 from the Intercarrier Compensation NPRM, in support of its view that there is currently no Federal regulation concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. Pacific asserts that the FCC would not have had to ask the questions that it did if its current rules on this issue were clear. We disagree with Pacific's interpretation. A more logical interpretation is that the FCC is examining the issue, in light of new information, to determine the necessity of amending its current rule to provide compensation to the ILECs for transporting traffic to the POI. The current rule was adopted, without taking the concept of a single POI into account, and in its Intercarrier Compensation NPRM, the FCC is taking the opportunity to revisit its rule, in light of some CLECs' intention to establish a single POI per LATA.

In its Comments, Pac-West states that the DD requires terminating carriers to pay access charges to the originating carrier when a terminating carrier's single POI in a LATA is in a different local calling area than the originating calling area, irrespective of the eventual termination point of the call. That misstates the outcome of our order. The physical route a call takes between its origination and termination points has no bearing on whether the call is local or toll. In order to determine if a particular call is local or toll, the rating points of the calling and called numbers are compared to determine if the call is deemed for billing purposes to be originating and terminating in the same local calling area (a local call) or in different local calling areas with rating points more than

16 miles apart (a toll call). Even though the call is passed from one carrier to the other at the POI, we do not count the POI as the termination point for the call. Rather, the rating point of the called party determines the eventual termination point of the call.

Pac-West and O1 point out that the terminating carrier would always charge the originating carrier switched access. Pac-West states that this makes sense because the originating carrier collects all of the revenue paid by the customer for the toll call, and therefore compensates the terminating carrier via the access charge process for its termination of the call. We clarify that it is our intention to require that the originating carrier pay access charges in the form of transport and tandem switching, if applicable, to the terminating carrier for carrying intraLATA traffic across the terminating carrier's network to the called party.

The Draft Arbitrator's Report required GNAPs to pay the ILECs for transporting and terminating traffic from GNAPs' customers, but at Total Element Long Run Incremental Costs (TELRIC) rates. We do not believe that TELRIC rates are appropriate in this case where we are clearly dealing with what are defined as intraLATA toll calls. Carriers traditionally pay access charges to other carriers who complete their customers' intraLATA calls, and there is no reason that GNAPs should be treated any differently for the intraLATA phone calls its customers make.

Pacific made its proposal for the use of TELRIC pricing for transport and tandem switching on its side of the POI, based on the intention of applying that to certain types of <u>local</u> traffic. We have determined that it is not appropriate for Pacific to charge GNAPs for transport of local traffic on Pacific's side of the POI. Pacific did not, however, intend to apply TELRIC pricing to intraLATA traffic.

In their Statements, both Pacific and Verizon indicate that when a CLEC designates a single POI in a LATA, the ILECs are entitled under this Commission's decisions to receive compensation at TELRIC rates for transporting traffic to a single POI outside of the local calling area. The ILECs traced this requirement to Decision (D.) 99-09-029, in which the Commission determined that all carriers should be "reasonably compensated for use of their networks."[9] We remind the ILECs that D.99-09-029 addressed the VNXX issue, not the single POI issue, so they have taken the statement out of context. As we state below, we are relying on D.99-09-029 to resolve the VNXX issue.

Both Verizon and Pacific dispute the outcome in the FAR on Issue 2 on policy grounds as well. Verizon asserts that there is no valid legal or policy basis to support the ICA's abolition of intraLATA access charges for GNAPs. According to Verizon, either by precedent or through adoption under § 252(i), it will result in the end of intraLATA access charges for all CLECs. If the ICA is approved by the Commission, there is effectively no longer a category of intraLATA access traffic for CLECs in California. Verizon claims that not only is this illegal, it is bad policy.

Verizon states that it does not dispute the provision in the ICA that allows GNAPs to select the geographic calling area it will offer to its retail end-users for a flat, monthly rate. The ICA, however, also allows GNAPs to use this self-selected geographic area to determine whether GNAPs should pay Verizon reciprocal compensation or access charges to terminate its traffic. This should not be permitted because it would abolish access charges.

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[9] Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Decision (D.)99-09-029 (rel. Sept. 2, 1999) "D.99-09-029."

Verizon asserts that the ICA contravenes Commission precedent establishing statewide uniform calling zones. The FCC looks to the states to determine what geographic areas should be considered a "local area" for purposes of applying reciprocal compensation obligations under § 251(b)(5) of the Act. This Commission's historical practice is to define all calls routed over 16 miles as toll calls.[10] In order to be consistent with its practice of defining local service areas, Verizon states the Commission must adhere to its uniform, statewide design for local calling areas for intercarrier compensation purposes. Federal law allows the Commission to change how it defines local calling zones, but the Commission has not done so. Verizon asserts that to be consistent with state and federal law, Verizon's calling areas must be used as the basis for the parties' intercarrier compensation obligations.

Pacific echoes the same concerns expressed by Verizon, stating that when the LATA boundaries fall, GNAPs looks forward to designating just one POI in every state in which SBC can lawfully provide interLATA service. Pacific claims that eventually GNAPs intends to have just one POI per region. If GNAPs' proposal is adopted, instead of competing with low monthly rates for exchange access, GNAPs will have a perverse incentive to offer a bundle of local and long distance calling at a high fixed rate, not because it truly reflects the costs incurred but because GNAPs can avoid paying for any transport or any access charges that way. Pacific criticizes the FAR for not challenging any of the economic reasons for requiring GNAPs to pay the additional costs it causes.

[10] Verizon cites D.90-06-011 and D.90-11-058, addressing the expansion of the local calling scope and creation of Zone Usage Measurement (ZUM).

We support the ILECs' policy arguments relating to Issue 2. It is not our intent in this arbitration to disrupt the local and intraLATA calling paradigm adopted by this Commission. And we have no intention of making a decision in an arbitration proceeding that would have the net result of abolishing intraLATA calling. For calls that are intraLATA in nature, e.g., those beyond 16 miles, traditional access charges will apply.

The second area that Pacific and Verizon dispute relates to Issues 3 and 4. The FAR addressed issues 3 and 4 together. Those issues are as follows:

3) Should the ILECs' local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own local calling areas?

4) Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

In resolving Issue 3, the FAR determined that GNAPs can define the local calling area boundaries for its own customers, and we concur with that determination. Issue 4 includes three major sub-parts:

- May GNAPs establish disparate rating and routing points for its customers?

- Is that VNXX[11] traffic subject to reciprocal compensation provisions?

- Should GNAPs pay access charges or TELRIC-based transport charges for transporting such traffic across the ILEC's network?

[11] VNXX (Virtual NXX) traffic is traffic where the NXX (central office codes) are used to provide locally-rated calling to customers who physically reside beyond the local calling area of the designated NXX code.

The FAR found that GNAPs may establish disparate rating and routing points for its customers. However, the FAR includes the caveat that GNAPs must ensure that NXX codes are associated with a particular rate center to identify the jurisdictional nature of the traffic for intercarrier compensation purposes, and we concur with that outcome. This is consistent with our determination in D.99-09-029, in which we addressed the issue of VNXX codes and determined that a carrier may set disparate rating and routing points. The FCC has not addressed this particular issue in its rules, although the issue is to be addressed in the FCC's Intercarrier Compensation NPRM. This outcome allows the CLEC to make more effective use of its unique network topology, while ensuring that calls are rated properly.

The FAR also determined that VNXX traffic is subject to reciprocal compensation obligations. This is consistent with our finding in D.99-09-029 that such traffic should be treated as local calls:

> We conclude that the assigning of NXX prefixes of ISPs in the manner used by Pac-West constitutes a form of foreign exchange service from the perspective of the end user. As such, the Pac-West arrangement warrants rating of the calls from the rate center of the foreign exchange in similar fashion to more traditional forms of foreign exchange service. Accordingly, such calls would be rated as local calls if originated from a rate center within 12 miles of the rate center of the designated foreign exchange of the called party's NXX prefix. This principle is consistent with the underlying intent of the tariffs governing the rating of calls as toll or local, applied in the context of foreign exchange service.[12]

[12] D.99-09-029 at 25.

Since these calls are rated as local calls, they should be subject to reciprocal compensation requirements. This is consistent with our treatment of the ILECs' tariffed FX service.

The FAR also determined that GNAPs is not required to compensate Pacific and Verizon for use of the ILECs' transport and tandem switching networks to carry the FX-type traffic. The FAR found that GNAPs could not be assessed intrastate access charges or transport and tandem switching at TELRIC prices under the dictates of FCC Rule 703(b), which does not allow the ILEC to charge for transport on its side of the POI. The FAR relied on § 703(b), and the 115 in the FCC's Intercarrier Compensation NPRM, in support of that conclusion.

We do not agree with the FAR's outcome on this issue. First, the FCC has said very little about VNXX traffic, although the issue is up for comment in the Intercarrier Compensation NPRM. It is not appropriate to rely on Rule 51.703(b) to say that GNAPs should not be required to pay for transporting traffic across the ILECs' networks to turn the resulting calls into local calls. We view this more in the nature of traditional tariffed FX service, where the customer obtains a local presence in a different community, but the customer pays to transport those calls from the central office which actually serves the customer to the central office where the customer wants to establish a calling presence. FX customers do not get the service at no charge, and we believe that the ILECs should be compensated for routing the traffic to a different rate center.

This finding is consistent with D.99-09-029, in which we made the following determination on the specific issue of intercarrier compensation in cases of disparate rating and routing:

> We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions performed to deliver calls to their destination, irrespective of how a call is rated

> based on its NXX prefix. Thus, it is the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement—not the rating point—of a call which properly forms a basis for considering what compensation between carriers may be due.[13]

In that decision, we also concluded that we did not have sufficient record to adopt specific intercarrier compensation arrangements for the transport and delivery of traffic involving different rating and routing points. We did determine, however, that existing tariffed switched access rates, such as those charged by the ILEC to other carriers for the transport of intraLATA toll traffic, did not necessarily provide a fair or economically efficient basis for intercarrier compensation under this type of FX arrangement. (D.99-09-029 at 32.) Until such time that the Commission had an opportunity to revisit the issue, carriers were told that they should resolve the issue through interconnection agreements negotiated in conformance with the Act. This issue is before us in this arbitration proceeding because parties to this arbitration were unable to agree on the proper treatment of these FX-type calls.

In its Comments, O1 claims that VNXX traffic is not included in the "carve-out" provisions of § 251(g), so it must be subject to FCC Rule 51.703(b). GNAPs makes a similar argument stating that because the decision declares that VNXX traffic is local traffic, and Rule 703(b) forbids the ILECs from assessing any charges to transport "local" traffic, GNAPs cannot be required to pay the ILECs to transport that VNXX traffic.

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[13] D.99-09-029, September 2, 1999, at 35.

We disagree with this viewpoint. VNXX calls would be intraLATA toll calls if GNAPs did not specify a different rate center for the calls than the rate center where the customer is physically located. These VNXX calls would be intraLATA calls, not local calls, if tied to the rate center that serves the customer. By allowing disparate rating and routing, we are allowing for those calls to become local calls, and as such, subject to reciprocal compensation. However, GNAPs is required to pay the additional transport required to get those calls to where they will be considered local calls. As stated above, this is similar to the concept of the ILECs' tariffed FX service, in which the customer pays for the privilege of receiving dialtone from a different exchange. Because these calls would be intraLATA toll calls, if they were rated out of the rate center which actually provides service to the customer, they are not subject to the provisions of Rule 703(b).

On an interim basis, until further action by this Commission or by the FCC in its Intercarrier Compensation NPRM, we will require GNAPs to pay the ILECs for use of their networks at TELRIC prices. We adopt TELRIC pricing in lieu of switched access charges because we believe that TELRIC prices provide adequate compensation to the ILECs for use of their network. Switched access rates are higher than Unbundled Network Element prices based on the TELRIC methodology and, as such, will help to encourage competitors to make use of VNXX traffic and make creative service offerings to their customers.

In its comments on the DD, Verizon indicates that GNAPs should not be permitted to use Verizon's network to provide toll-free interexchange calling to Verizon customers and then charge Verizon reciprocal compensation for that privilege. This should be especially true when GNAPs use of virtual NXX codes relieves Verizon's end-users from paying toll. We remind Verizon that they are receiving compensation for those VNXX calls. The ILECs are being compensated at TELRIC prices for transporting those VNXX calls for GNAPs.

It appears that the ILECs both support the use of TELRIC pricing for transport of GNAPs' VNXX traffic. In its Statement, Verizon states:

> ...the DAR [Draft Arbitrator's Report] correctly recognized that 'ILECs are entitled to fair compensation for the use of their facilities in the transport of FX traffic.' The DAR required GNAPs to compensate Verizon at TELRIC rates for use of Verizon's network to carry the virtual NXX traffic to GNAPs' POI. This result was consistent with the result ordered in the AT&T/Pacific Bell arbitration.[14]

In its Statement, Pacific includes the following:

> D.99-09-029 is clear that 'reasonable compensation' must be paid. What D.99-09-029 did <u>not</u> decide is what the '*proper* compensation arrangement' should be - access charges, TELRIC, or some other 'reasonable' amount. See Conclusions of Law 10 and 11 of that decision. Pac-West's implicit suggestion that what D.99-09-029 meant by 'reasonable compensation' is *zero* compensation is absurd. The Commission was within its rights to order for the time being, that 'reasonable compensation' could be based on TELRIC. Other State commissions faced with the same question have ordered compensation at access rates.[15]

Pac-West explains that the routing point of a given telephone number in the Local Exchange Routing Guide (LERG) tells all carriers where to deliver calls

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[14] Statement of Verizon California Inc. Regarding Commission Approval or Rejection of the Interconnection Agreement Conformed to the Final Arbitrator's Report, May 29, 2002, at 13-14.

[15] Statement of Pacific Bell Telephone Company Regarding Whether the Interconnection Agreement Resulting from this Proceeding Should be Approved or Rejected by the Commission, May 22, 2002, fn. 3.

to or from that number. All ILECs and CLECs specify routing points for their telephone numbers. To the extent the routing point is associated with a specific place on a carrier's network, it will have different V&H coordinates than the rating point of the telephone numbers associated with the rating and routing point. Therefore, Pac-West concludes there will be disparate rating and routing points for almost all (if not all) telephone numbers, even those served by ILECs.

Regardless of how a call is routed to a particular customer, that customer is associated with a particular rating point, generally based on the central office that provides dialtone to that customer. Under a system of disparate rating and routing, that customer would be rated as though it were served out of a different central office.

In its Comments on the DD, GNAPs states that in the ISP Remand Order, the FCC determined that intercarrier compensation for ISP-bound traffic is solely within the jurisdiction of the FCC and that on a going-forward basis, state commissions have been preempted from addressing the issue. GNAPs states that intercarrier compensation for ISP-bound traffic is not an appropriate subject for ICAs. GNAPs neglects to mention that the parties—Pacific, Verizon and GNAPs—all addressed the issue of ISP-bound traffic in their ICAs. In fact, the parties agreed to the language relating to ISP traffic, and that particular issue is not before us in this arbitration. In the Pacific/GNAPs' ICA, Appendix Reciprocal Compensation, § 5.1 includes language that was agreed to by both Pacific and GNAPs that states local traffic to ISPs will be compensated the same as other local traffic:

> Until and unless ILEC chooses to invoke the FCC's pricing plan as ordered in FCC 01-131, the compensation set forth below will also apply to all Local and Local ISP Calls as defined in section 3.2 of this Appendix....

Further, the parties also recognized and agreed that ISP and Internet-bound traffic could also be traded outside of the applicable local calling area. IntraLATA Interexchange Traffic was one example of this type of traffic. Further, § 6.2 contains the following language negotiated by the parties: "To the extent such "nonLocal" ISP calls are placed, the Parties agree that section 5 above does not apply, and that the Agreement's rates, terms and conditions for IntraLATA and/or InterLATA calling shall apply…." In other words, the parties themselves have negotiated the language relating to compensation for ISP-bound traffic.

The issue is handled differently in the Verizon ICA. Verizon has adopted the FCC's pricing plan outlined in the ISP Remand Order, and the ICA includes the following language, which was negotiated by the parties:

> 7.3.2 Reciprocal Compensation shall not apply to Internet Traffic
>
> 7.3.2 The determination of whether traffic is Reciprocal Compensation Traffic or Internet Traffic shall be performed in accordance with the FCC Internet Order and then current Applicable Law.

To summarize, in both ICAs, the parties have negotiated and agreed to language relating to compensation for ISP-traffic. The Commission is not being asked to resolve issues relating to ISP-bound traffic. We note that our decision refers to calls as "local" or "intraLATA," and does not refer to ISP-bound calls so we are not in violation of the ISP Remand Order.

We recognize that both the FCC and this Commission have open dockets which deal with the issue of how to treat VNXX traffic. Any decisions issued by this Commission or the FCC will be covered by the change in law provisions of the ICAs we are adopting here.

In its comments on the conformed interconnection agreement, Verizon encouraged us to reject the ICA because it was not compliant with the Act. With the changes we have made to the FAR, and to the conformed interconnection agreements, in this decision, we believe that the arbitrated portions of the ICAs are in compliance with the Act and the FCC's rules and should be adopted.

5. Preservation of Authority

Section 252(e)(3) of the Act provides that nothing shall prohibit a state Commission from establishing or enforcing other requirements of state law in its review of an agreement, including compliance with intrastate telecommunications service quality standards. Our Rules 4.2.3 and 4.3.1 provide that we may also reject agreements or portions thereof, which violate other requirements of the Commission, including but not limited to, quality of service standards. Other than the matters addressed and disposed of above, no party or member of the public identifies any clause in the ICA that potentially conflicts with any state law, or requirement of the Commission, including service quality standards, and we are aware of none.

6. Filing the Conformed ICA

Within 30 days of the date of this decision, parties shall file and serve entire ICAs which conform with the decisions herein. Parties should also serve a copy on the Director of the Telecommunications Division. Parties should sign the conformed ICAs before they are filed so that they may become effective without additional delay. The signed ICAs should become effective on the date filed.

7. Waiver of Period for Public Review and Comment

The Public Utilities Code and our Rules of Practice and Procedure generally require that draft decisions be circulated to the public for review and comment 30 days prior to the Commission's vote.[16] On the other hand, the Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties.[17] This establishes a conflict.

However, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." We consider and adopt this decision today under the state arbitration provisions of the Act.

Under Rule 77.7(f)(5), we are not required to provide this Draft Decision for public review and comment. However, since we made some changes from the FAR, we chose to send the Draft Decision to the parties so that parties could be given an opportunity to comment on the changes from the FAR. The Draft Decision was mailed and e-mailed to parties on June 13, 2002, and comments were filed on June 20, 2002. Comments were filed by GNAPs, Verizon, Pacific, Pac-West Telecomm, Inc. (Pac-West), and O1 Communications, Inc. (O1). We have taken the comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. No party or member of the public alleges that any negotiated portion of the ICA must be rejected.

2. No negotiated portion of the ICA results in discrimination against a telecommunications carrier not a party to the ICA; is inconsistent with the public

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[16] See Pub. Util. Code § 311(g)(1), and Rule 77.7 of the Commission's Rules of Practice and Procedure.

[17] 47 U.S.C. Section 252(e)(4).

interest, convenience and necessity; or does not meet other Commission rules, regulations, and orders, including service quality standards.

3. No arbitrated portion of the ICA, as modified by this decision, fails to meet the requirements of § 251 of the Act, including FCC regulations pursuant to § 251, or the standards of § 252(d) of the Act.

4. Interexchange traffic is not subject to the Act's reciprocal compensation requirements.

5. Rule 51.703(b) forbids the ILECs from assessing any charges to transport "local" traffic which is subject to reciprocal compensation provisions.

6. GNAPs is responsible for compensating the ILECs for terminating intraLATA toll calls from GNAPs' customers.

7. GNAPs is not responsible for compensating the ILECs for transporting local calls on the ILECs' side of the POI.

8. The calling areas adopted by the Commission govern whether a call is local or an intraLata toll call.

9. The physical route a call takes between its origination and termination points has no bearing on whether the call is local or toll.

10. The rating points of the calling and called numbers are compared to determine whether the call is local or toll.

11. VNXX traffic is local traffic and is subject to reciprocal compensation requirements.

12. A carrier may set disparate rating and routing points.

13. TELRIC pricing adequately compensates the ILECs for use of their networks.